

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HUTCH & ASSOCIATES, INC. d/b/a
HUTCH'S RESTAURANT; and
DELAWARE RESTAURANT HOLDINGS, LLC
d/b/a REMINGTON TAVERN & SEAFOOD
EXCHANGE,
for themselves and on behalf of a class of
similarly situated policyholders,

Plaintiffs,

- v -

ERIE INSURANCE COMPANY OF NEW YORK;
ERIE INDEMNITY COMPANY d/b/a
ERIE INSURANCE GROUP;
ERIE INSURANCE COMPANY;
ERIE INSURANCE PROPERTY & CASUALTY
COMPANY;
ERIE INSURANCE EXCHANGE; and
FLAGSHIP CITY INSURANCE COMPANY,

Defendants.

Civ. Action No.:
1:20-cv-00896-GWC

Hon. Geoffrey Crawford, Presiding

BUFFALO XEROGRAPHIX INC.,
SHATKIN F.I.R.S.T. INC, AND
TODD E. SHATKIN DDS PLLC
for themselves and on behalf of a class of
similarly situated policyholders,

Plaintiffs,

- v -

THE HARTFORD INSURANCE GROUP a/k/a
THE HARTFORD FINANCIAL SERVICES
GROUP, INC.;
SENTINEL INSURANCE COMPANY, LTD.;
HARTFORD CASUALTY INSURANCE
COMPANY; and
HARTFORD INSURANCE COMPANY
OF THE MIDWEST;

Defendants.

Civ. Action No.:
No. 20-cv-00520-GWC

Hon. Geoffrey Crawford, Presiding

MOTION MADE BY:

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

Attorneys for Plaintiffs in the above-captioned actions (the “Plaintiffs”)

DATE, TIME, AND

PLACE OF HEARING:

On November 23, 2020, at 9:30am or such other date and time as the Court shall designate.

Before Hon. Geoffrey Crawford

United States District Court

Western District of New York

2 Niagara Square

Buffalo, New York 14202

RELIEF REQUESTED:

An Order consolidating the following actions (hereinafter, the “Covid-19 BI Cases”) for the limited purpose of jointly considering whether the presence of novel coronavirus and the disease COVID-19 is, or could cause, “direct physical loss of or damage to” property to trigger coverage under the subject insurance policies:

1. *Buffalo Xerographix Inc. et al. v. The Hartford Ins. Grp. et al.*, (W.D.N.Y. Index No. 1:20-cv-00520) (Hon. Geoffrey Crawford, Presiding);
2. *Hutch & Assocs., Inc. et al. v. Erie Ins. Co. of N.Y. et al.*, (W.D.N.Y. Index No. 1:20-cv-00896) (Hon. Geoffrey Crawford, Presiding);
3. *Kim-Chee LLC et al. v. Philadelphia Indemnity Insurance Company et al.*, (W.D.N.Y. Index No. 1:20-cv-01136) (Hon. Christina Reiss, Presiding);
4. *Salvatore’s Italian Gardens, Inc. et al. v. Hartford Fire Ins. Co.*, (W.D.N.Y. Index No. 1:20-cv-00659) (Hon. Lawrence J. Vilardo and Hon. Leslie G. Foschio, Presiding).

GROUND FOR RELIEF:

Federal Rule of Civil Procedure 42(a)

SUPPORTING PAPERS:

Memorandum of Law in Support of Plaintiffs’ Motion to Consolidate dated November 5, 2020, and ***Exhibit A*** annexed thereto

RESPONDING PAPERS:

Defendants shall have fourteen (14) days after service of this motion to file and serve responding papers. Plaintiffs shall have seven (7) days after service of the responding papers to file and serve reply papers.

Dated: Buffalo, New York
November 5, 2020

DUKE HOLZMAN PHOTIADIS & GRESENS LLP

By: /s/ Steven W. Klutkowski
Charles C. Ritter, Jr.
Steven W. Klutkowski
Christopher M. Berloth
Attorneys for Plaintiffs
701 Seneca Street, Suite 750
Buffalo, New York 14210
critter@dhpqlaw.com
sklutkowski@dhpqlaw.com
cberloth@dhpqlaw.com

cc via CM/ECF: All Attorneys of Record